

HIGHLAND LAKES ASSOCIATION OF REALTORS LOCKBOX RULES AND REGULATIONS

Adopted May 21, 2007

Lock Boxes (Policy Statement 7.1)

No multiple listing service need use lock boxes and no listing broker need use a lock box on a property, but if the multiple listing service does offer the lock boxes, it must make them available to anyone who participates in the multiple listing service. Nothing shall prevent the owner's right to refuse to have a lock box on his property.

A lock box is a container affixed to property containing a device to gain access to the property being marketed by a participant in the MLS. Participants in the MLS or their salespersons (and licensed or certified appraisers and licensed inspectors affiliated with the Association) are authorized under certain conditions to open these lock boxes under terms specified by the listing broker. Cooperating brokers and sales licensees, whether functioning as subagents of the listing broker or as agents of potential purchasers, must contact the listing broker to disclose their agency status and to arrange appointments to show listed property even if the property has a lock box affixed to it unless the listing broker has given specific permission (through information published in the MLS or otherwise) to show the property without first contacting the listing broker.

If an association or its multiple listing service elects to engage in the sale, rental, or distribution of lock boxes to its members or be involved in any way with the sponsorship or endorsement of a common lock box system, the lock box security requirements as established by the NATIONAL ASSOCIATION OF REALTORS® shall be the minimum security measures adopted and implemented in connection with such lock box system. Eligibility for coverage under the National Association's blanket errors and omissions insurance program is contingent on compliance with the lock box security requirements whether the system is operated by the association, its MLS, or on behalf of an association by a recognized lock box vendor.

Lock Box Security Requirements (Policy Statement 7.31)

Eligibility for coverage under NAR's blanket errors and omissions insurance program is contingent on compliance with the following security measures whether the system is operated by the association, its MLS, or on behalf of an association by a recognized lock box vendor:

1. Any key, programmer, or other device (hereinafter referred to as key) by which a lock box can be opened shall be nonduplicative. By nonduplicative it is not meant that the key is necessarily covered by a current patent but that it cannot be readily copied in the manner that other types of keys ordinarily are.
2. Keys must be obtained from the original manufacturer, from a recognized vendor of lock box systems or from any other legitimate source. Prior to utilizing

previously used keys, lids, or boxes, information shall be obtained from the original manufacturer to determine whether the key's pattern, code, or configuration is already in use by other associations, multiple listing services, or other users in the vicinity. Surrounding associations and multiple listing services shall also be contacted to determine whether the key's pattern, code, or configuration is currently in use.

3. Any lock box system shall be designated as either an activity of an association of REALTORS® or an association-owned and operated MLS.

If the lock box system is an activity of an association of REALTORS®, then every REALTOR® and REALTOR-ASSOCIATE® and every non-principal broker, sales licensee, licensed or certified appraiser and licensed inspector affiliated with the Association, shall be eligible to hold a key subject to their execution of a lease agreement with the association.

If the lock box system is an activity of an association-owned and operated multiple listing service, then every MLS participant and every non-principal broker, sales licensee, licensed or certified appraiser and licensed inspector who is affiliated with an MLS participant and who is legally eligible for MLS access shall be eligible to hold a key subject to their execution of a lease agreement with the MLS.

Associations and multiple listing services may require, as a matter of local determination, that key lease agreements executed by non-principal brokers, sales licensees will be cosigned by the designated REALTOR® or the office's broker of record. Associations and multiple listing services may require, as a matter of local determination, that key lease agreements be executed by licensed or certified appraisers and licensed inspectors. Lease agreements shall spell out the responsibilities of the parties and shall incorporate by reference any applicable rules or regulations or other governing provisions of the association or MLS that relate to the operation of the lock box system. The lease agreement shall also provide that keys may not be used under any circumstances by anyone other than the keyholder.

Associations and multiple listing services may refuse to sell or lease lock box keys, may terminate existing key lease agreements, and may refuse to activate or reactivate any key held by an individual convicted of a felony or misdemeanor if the crime, in the determination of the association or MLS, relates to the real estate business or puts clients, customers, or other real estate professionals at risk.

Associations or multiple listing services may suspend the right of lock box keyholders to use lock box keys following their arrest and prior to their conviction for any felony or misdemeanor which, in the determination of the association or MLS, relates to the real estate business or which puts clients, customers, or other real estate professionals at risk.

Factors that can be considered in making such determinations include, but are not limited to:

- the nature and seriousness of the crime
- the relationship of the crime to the purposes for limiting lock box access
- the extent to which access (or continued access) might afford opportunities to engage in similar criminal activity
- the extent and nature of past criminal activity
- time since criminal activity was engaged in
- evidence of rehabilitation while incarcerated or following release and
- evidence of present fitness

Administration of a lock box system as an activity of an association of REALTORS® may, at the discretion of the association, be delegated to its multiple listing service.

No one shall be required to lease a key from the association except on a voluntary basis.

Key lease agreements may contain a liquidated damages provision to offset some or all of the costs in reestablishing the security of the system if it is determined that the security has been compromised through the negligence or fault of the keyholder.

4. Associations shall maintain current records as to all keys issued and in inventory. There shall be an audit, at least annually, of all keys, whether issued or in inventory. This requirement may be satisfied by a physical inventory or, alternatively, by receipt of a statement signed by the keyholder and the designated REALTOR®, broker of record, or, in the case of an inspector member, by a principal, partner, or corporate officer of the keyholder's firm, attesting that the key is currently in possession of the keyholder. This audit requirement does not apply to electronic lock box programmers or keypads which are sold or leased provided such devices may be deactivated within thirty (30) days.
5. If, at the time of inventory, a key is unaccounted for, or if a keyholder refuses or is unable to demonstrate that the key is within their physical control, then the key will be considered unaccounted for and any funds on deposit will be forfeited to the association.

Deposits for electronic programmers or electronic keycards which are leased but

which can be deactivated within thirty (30) days may be required as a matter of local determination.

6. Lock boxes may not be placed on a property without written authority from the seller. This authority may be established in the listing contract or in a separate document created specifically for the purpose. Inclusion in MLS compilations cannot be required as a condition of placing lock boxes on listed property.
7. Associations shall charge keyholders and their cosignatories with the joint obligation of immediately reporting lost, stolen, or otherwise unaccountable for keys to the association. Upon receipt of notice, the association shall take any steps deemed necessary to resecure the system.
8. Associations shall adopt written, reasonable, and appropriate rules and procedures for administration of lock box systems which may include appropriate fines, not to exceed \$5,000. Any issuing fees, recurring fees, or other administrative costs shall be established at the discretion of the association and set forth in the rules and procedures. All keyholders shall agree, as a condition of the key lease agreement, to be bound by the rules and procedures governing the operation of the lock box system.
9. Notwithstanding the foregoing, associations and multiple listing services may sell electronic lock box programmers or keypads to MLS participants and others eligible to hold lock box keys pursuant to these requirements provided that such devices may be deactivated, if necessary, within a reasonable period not to exceed thirty (30) days and that the participant has authorized the sale in writing. In the event electronic lock box programmers or keypads are sold or leased, a designated REALTOR® principal or an office's broker of record may purchase or lease additional programmers or keypads to be issued on a temporary basis to other keyholders in the same office in the event their programmer or keypad becomes non-functional outside normal business hours or under circumstances where a replacement programmer or keypad is not reasonably available from the issuing association or MLS. When a programmer or keypad is issued on a temporary basis, it shall be the responsibility of the REALTOR® principal or the broker of record to advise the association or MLS in writing that the programmer or keypad has been issued, to whom, and the date and time of issuance within forty-eight (48) hours. It shall also be the responsibility of the REALTOR® principal or the broker of record to advise the association or MLS in writing within forty-eight (48) hours after possession of the previously issued programmer or keypad has been reassumed.